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Review of Important Decisions

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REVIEW OF IMPORTANT DECISIONS

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Stutsman v. Cook et al.

A warehouseman gave a statutory warehouseman's surety company bond covering a two years' period and a like personal bond for the subsequent two years' period. Grain was stored prior to the first two years' period and a storage ticket issued therefor. Other storage tickets were issued during the periods when the bonds were in force. All of the grain stored prior to and during the first period was shipped and sold before the end of the first period, and the proceeds were applied to the warehouseman's indebtedness to the buyers. The warehouseman was unable to redeem the tickets either by delivery of the grain or by payment of its value and was found insolvent. The warehouseman turned over to the sureties on the personal bonds, notes, life insurance and bills receivable, the proceeds of which were to redeem outstanding receipts issued during the life of the personal bond. The action is on the two bonds for the use and benefit of all holders of outstanding storage tickets. HELD: That a warehouseman who ships all grain stored in his warehouse out of the state, sells the same and applies the proceeds thereof on his own indebtednesss, when he is insolvent and has no grain in his warehouse nor in terminal elevators for the redemption of outstanding storage tickets, converts the grain so stored and he and his bondsmen are liable for the value thereof; that since a demand would have been unavailing, it was unnecessary; that the warehouseman's bond having been given for a period of two years, the sureties thereon are liable for all conversions of the warehouseman during that period only; that there is no right of contribution between sureties on bonds for different periods; that the sureties on the second bond in the case must account strictly for all property and money turned over to them which may be left after the storage tickets for which said bond is liable are redeemed; and that the surety on the first bond is subrogated to the rights of the warehouseman for any balance of such property remaining after such redemption of tickets for the second period.

Huether v. McCall-Dinsmore Company, a corporation, et al.

Grain was stored in a public warehouse and sold in the terminal markets by the named defendant, a corporation, engaged in the grain commission business, such defendant having knowledge that the grain shipped to it was stored grain. The owner knew that the grain would be commingled with other grain and shipped out of the state. Recourse was had against the warehouseman's bond, and a part of the owner's aggregate claim was realized therefrom and thereafter this suit was commenced for the entire claim. HELD: That the defendant engaged in the grain commission business having knowledge that the grain shipped to it was stored was liable for a conversion thereof; that where the owner of grain stores it in a public warehouse with knowledge that the warehouseman will commingle it with other grain and ship it out of the

state, he is not thereby estopped from recovering for the conversion thereof against the commission agent who sells it at the terminal market, but such knowledge is a circumstance to be taken into consideration in determining whether he authorized, consented to or ratified the sale thereof; that the measure of damages in such case is the value of the grain at the time and place of conversion, less storage charges to the date thereof, plus freight charges from the local market to the terminal market; and that where recourse has been had against a warehouseman's bond and a part of an owner's claim realized therefrom, he can recover in an action against the converter only the excess of his claim over and above the amount realized from the bond. Other questions decided are not here abstracted.

RE: Bryans; A Disbarment Proceeding.

Ten specifications were considered by the referee. Upon three of these the referee submitted findings to the effect that respondent's conduct was unprofessional. Two of these are approved by the supreme court. It was found that respondent verified a complaint alleging that a certain bank was the assignee of the proceeds of an insurance policy and filed a brief in support of such contention, when he knew as a matter of fact that the bank had no interest in the policy in suit. This is held a violation of the attorney's duty under Paragraph 3 of Section 794, Compiled Laws 1913. It was further found that he settled a law suit for $4,000.00, and represented to his client that settlement was made for $3,200.00, and paid his client one-half of the sum alleged by him to have been recovered under a contingent fee agreement. Upon this charge he was held guilty of deceit as defined by Section 795, Compiled Laws 1913. The court's conclusion is expressed as follows:

"We believe if the license to practice be taken away from respondent for a period of time he will come to a fuller realization of what it means to be entrusted with a license to practice the profession of law. The evidence as we view it does not show him so unfit and untrustworthy as to require a judgment of disbarment, and it is not at all likely that he will offend again. If he does, it can be accepted as evidence of his unfitness and disbarment will then follow. Respondent will stand suspended for a period of one year from the practice of law before any of the courts of this state."

Welch Manufacturing Company, a corporation, vs. **Herbst Department Store, a corporation.**

In this action on a contract, judgment was rendered in favor of the plaintiff and defendant moved in the alternative for judgment notwithstanding the verdict or for a new trial. The trial court denied the motion for judgment notwithstanding the verdict, but granted a new trial, and both parties appealed. Plaintiff objects to consideration of defendant's appeal. Chapter 335, Laws of 1923, is construed. HELD: That where a motion for a directed verdict has been denied, and the moving party thereafter moves the court in the alternative for judgment notwithstanding the verdict, or for a new trial, and the court denies the

motion for judgment but grants or denies the motion for a new trial, the moving party may appeal from the order as a whole and have the ruling on the motion for judgment notwithstanding the verdict reviewed in the supreme court.

GETTING A JURY IN CHICAGO

(Editorial in Fargo Forum)

The difficulty experienced by prosecution and defense attorneys in securing a jury to try William Shepherd focuses attention again upon certain weaknesses in the jury system of trial. So far, the Chicago trial has been absurd. It has brought out all the evils that possibly can be brought out in a criminal trial. It has shown how justice can be impeded when attorneys, without any check on them, resort to subterfuges and bickerings, and take advantage of every little technicality and legal "protection" that occurs.

This is not an argument against the jury system. Not at all. So far, it is the only workable system known, and, therefore. should be respected and used for the high purpose for which it was intended: the protection of the individual, the determination of guilt or innocence and the serving of justice. But, as the New York Times pointed out the other day, "many peculiarities of the system still are those imposed on it at a time when it was of enormous importance to protect common people from the oppression and the tyranny of the great." The Times declares that protection of the innocent often is distorted "into protection for the guilty" by the way in which attorneys make use of the jury system.

In the Shepherd case, counsel for both sides are endeavoring to secure men or women without any preconceived notion as to the guilt or innocence of the defendant. They seek people who are not familiar with the case, and that, of course, is a difficult task, for the Shepherd affair has been aired in every paper in the land for many weeks. What if the talesmen have read of it? What if they have formed some idea? Does that disqualify them? Does it preclude sane thinking and a balanced weighing of the evidence on their part? Not at all.

It is not a difficult thing for a man capable of common sense to dismiss any notion or opinions he may have of a case and to consider the evidence alone. Being unbiased in a jury box, no matter what the previous opinion, is not so difficult and not so impossible as it may sound to attorneys.

As a matter of fact, a jury should be selected for its intelligence, its ability to reason and weigh one bit of evidence against another, rather than for a lack of intelligence or disinterestedness in matters of public import. But it is the latter that attorneys frequently demand. It is the kind of a jury the attorneys are trying to find in Chicago, and if they keep at it long enough, they'll find it. But in the meantime they are making a farce of justice.